

3-1993

Labors of the Profession: The Law Practice of Nathaniel Hart Davis, A Texas Lawyer, 1850-1882

Brian Dirck

Follow this and additional works at: <http://scholarworks.sfasu.edu/ethj>



Part of the [United States History Commons](#)

[Tell us](#) how this article helped you.

Recommended Citation

Dirck, Brian (1993) "Labors of the Profession: The Law Practice of Nathaniel Hart Davis, A Texas Lawyer, 1850-1882," *East Texas Historical Journal*: Vol. 31: Iss. 1, Article 6.

Available at: <http://scholarworks.sfasu.edu/ethj/vol31/iss1/6>

This Article is brought to you for free and open access by SFA ScholarWorks. It has been accepted for inclusion in East Texas Historical Journal by an authorized administrator of SFA ScholarWorks. For more information, please contact cdsscholarworks@sfasu.edu.

**"LABORS OF THE PROFESSION":
THE LAW PRACTICE OF NATHANIEL HART DAVIS,
A TEXAS LAWYER, 1850-1882**

by Brian Dirck

An odd little wooden structure stands near the center of the town of Montgomery, Texas. The casual observer might mistake it for a barn or storehouse, with its single door, small window, and lack of adornment. A metal plaque identifies the building as the office of a mid-nineteenth century attorney, Nathaniel Hart Davis.¹

The door usually is locked. The Montgomery Historical Association sometimes opens the building and Davis's adjacent house to the public, but more often it stands closed to outsiders. The door remains closed in a figurative way, as well. Nathaniel Davis practiced law for over thirty years, yet we know little of what occurred inside this or any other law office in frontier Texas.

There were many such offices in the Lone Star state. Lawyers flocked to Texas throughout the nineteenth century. The state's growing population and expanding economy offered opportunities which resulted in what one Texan termed an "oversupply of lawyers." The tiny town of Clarksville alone boasted fourteen barristers in 1852.²

The early Texas bar acquired an unsavory reputation. The state supposedly harbored the most incompetent and unscrupulous legal practitioners in the entire country. The Southern humorist, James Baldwin, wrote of a fictional attorney, "Ovid Bolus, esq.," who cheated a client of valuable real estate. "I can conceive of but one extenuation; Bolus was on the lift for Texas, and the device was natural to qualify himself for citizenship." Baldwin's tale was apocryphal, but laymen believed there were many such men on the Texas frontier.³

Texas attorneys were thought to be unversed in the letter of the law. They read few law books and were entirely ignorant of legal precedent. One observer contemptuously dismissed Texans as "cornstalk lawyers," the legal equivalent of medical quacks. Another suggested that a competent attorney from the East could do well in Texas, since so many there were "unreliable."⁴

These men preyed on the chaotic social and economic conditions of frontier areas. The Texas attorney was an outsider, a predator, an exploiter of other's misfortunes. He earned his living from the inherent instability of the frontier, the litigation arising from widespread violence,

Brian Dirck earned a B.A. in history from the University of Central Arkansas, and an M.A. in history from Rice University.

squabbles over water and mineral rights, boundary disputes, bad land titles, estate settlements, and unpaid debts.⁵

Texas farmers and businessmen disliked the lawyer because he did not contribute to the state's development with real physical toil. He was a sharp-witted speechmaker who honed his rhetorical skills in courtroom harangues, but was not good for any "honest" work. T.R. Fehrenbach wrote that the attorney brought "a whole frightening bag of tricks" and was "rarely cast in the role of hero" by Texas folklorists.⁶

Were these impressions entirely accurate? Did they hold true for all, or even a majority of Texas's frontier lawyers? Farmers, merchants, travellers, writers, and other lay observers provided the lens through which historians viewed the Texas attorney, when they chose to inspect him at all. Lawyers themselves — their letters, speeches, diaries, and court records — have been rarely consulted. The door to the Texas law office has remained closed largely because few scholars have tried to open it.⁷

What did Nathaniel Davis do? What clients did he represent? What cases did he litigate? Was he a semi-educated, bombastic opportunist who took advantage of Texas's unstable social and economic environment?

Davis was a Southerner, born in Kentucky in 1815 and raised in Alabama. While a young man he decided on a legal career. At the age of twenty he apprenticed himself to his brother Hugh, an attorney in Marion, Alabama.⁸

Whether an aspiring lawyer-to-be acquired competency at his trade depended largely on the character and abilities of his instructor.⁹ Hugh took pains to ensure that his young charge was well prepared. Nathaniel's notebook indicated an extensive reading list: not only standard texts (Coke, Blackstone, and Chitty) but also treatises by Story and Kent, as well as cases reported from various state courts and the United States Supreme Court. Nathaniel later made a serious effort to master Spanish property law, a handy skill in Texas.¹⁰

Davis was enamored of the law books his brother-tutor instructed him to read. He amassed a considerable collection of his own after his admission to the bar. One list of purchases included Howard's law review, Wheaton's treatise on international law, a volume summarizing the work of the U.S. Court of Claims, and Paschal's digest of Texas law.¹¹

Davis prescribed a strict regimen of study for himself during his apprenticeship and afterwards. A typical schedule called for one hour of Spanish language and legal study, "one hour at least" of reading Texas and other court reports, and two hours of general legal reading per day. This in addition to the preparation of cases, "answer[ing] business letters, writ[ing] business [and] prepar[ing] papers."¹²

Davis was by nature a methodical, cautious man. "Never speak on any Subject, till you have studied profoundly," he wrote, quoting

Alexander Hamilton, "[t]ill you have mastered the Subject, so as to do it justice." This way of thinking pervaded his approach to the law as well as public speaking. He cautiously and exhaustively prepared his cases, often to the point of tedium and repetition. Hugh instilled these habits early in his brother.¹³

Nathaniel Davis was admitted to the Alabama bar in January 1837.¹⁴ Prospects for a young lawyer in that state apparently were not promising, for within two years he emigrated westward to Texas. Davis is said to have been persuaded in this decision by Sam Houston, whom he met on a New Orleans steamboat. Houston painted a bright picture of the opportunities awaiting a good attorney in the Lone Star Republic, particularly one who knew something of property and real estate law.¹⁵

Davis settled in the raw little community of Montgomery, located in southeast Texas. Montgomery was barely nine years old when he arrived. The town was a collection of log houses and not much else. Montgomery did not even have a courthouse, though land had been set aside for one.¹⁶ Davis recorded in his journal, "I arrived in Montgomery, Texas on April 4, 1840, at eleven and one half o'clock."¹⁷

The barrister from Alabama did not immediately begin practicing law. For the first several years he was preoccupied with helping his neighbors create a home in the wilderness. He was Montgomery's first mayor, an officer of the local militia, a notary public, a land commissioner, a Mason, and a church leader. Davis also performed a lengthy stint as Montgomery's justice-of-the-peace.¹⁸

Davis began practicing law full time in 1850. He specialized entirely in civil law, perhaps in the belief that the two other attorneys in town already possessed a monopoly on the criminal law trade.¹⁹ Like so many others of his profession, he began from the bottom up, handling simple, mundane cases for law fees as he slowly built a clientele and a reputation.

Davis's first customers were primarily local citizens. Advertising was out of the question, since Montgomery had no newspaper at the time. He seems to have solicited business largely through personal contacts. Many clients were neighboring farmers and merchants. Others were acquaintances from Davis's days as justice-of-the-peace, such as William Fowler, his court clerk.

Thirty-eight cases are extant from Davis's practice in 1850. These cases were litigated for thirty-two different clients, indicating that many of them were one-time-only customers. Only three men gave Davis any repeat business. William Fowler, Alexander McGown (both would be lifelong clients), and a local farmer named R.B. Martin.²⁰

Davis's clients were property holders, businessmen and farmers, who were involved in various schemes to acquire more property.²¹ Cash was in short supply, so most business was conducted on credit. Davis collected debts owed to his clients through these transactions. Thirty-seven of the

thirty-eight cases in 1850 involved some form of debt collection, with Davis almost always representing the plaintiff.²²

Much of this work involved real estate. In a typical case heard before the state district court in July 1850, Davis represented Alexander McGown in a suit involving a promissory note for land signed by William Simonton and endorsed by John M. Lewis and Charles Lewis. Davis named Simonton and the Lewises as co-defendants in the suit. The note was valued at \$536.00; Davis and his clients sued for \$1,000.00. The defendants denied owing McGown anything at all, but Davis produced a copy of the note, with their signatures, and won his case.²³

Land was not the only species of property involved in these debt cases. Davis's clients sued over money owed for a variety of goods and services. On one occasion, McGown hired him to sue Jason Ballew, claiming Ballew owed him for boarding two black children, caring for his horse and saddle, a quart of brandy, several dinners, and a cargo of animal fodder. Ballew replied that such claims were "confused, indefinite and in law wholly insufficient." How the matter was resolved is unknown.²⁴

Usually Davis was able to prove that the debt in a given case was legitimate. He produced promissory notes signed by the defendant, rendering a decision in his favor a foregone conclusion. The court then ordered the county sheriff to seize the defendant's property, if any could be found, and sell what was necessary to repay the debt. In one case, the court sold thirty-seven hogs to cover a debt owed by William Fowler to J.A. Luter. In another, the court took and sold a longhorn steer,²⁵

These seizures were somewhat uncommon. In ten of the thirty-seven debt cases litigated by Davis, neither the defendant or his property could be located. The state district court ruled in his favor, but found no property to seize. Several other cases were never resolved; Davis served a subpoena to the debtor, who promptly vanished.²⁶ In frontier Texas a man who owed money could easily skip town with his belongings and disappear. Travelling conditions were too poor and officials too few to chase them down.²⁷

The first year of full-time law practice was a hardscrabble existence for Davis. He litigated short-term debt cases for a variety of clients. Few of these cases lasted longer than one court term, and most involved clients who asked for Davis' assistance only once. His earnings could not have been great; he often received only a dollar for serving a subpoena to a debtor who would never appear in court.²⁸

After 1850 Davis' business grew steadily. The young attorney was a recognized town leader, a former mayor, militia officer, and judge. This civic prominence no doubt helped attract new business. His connections with Montgomery's propertied class, the men and women with whom he built the little town, also contributed to his prosperity. Davis was earning a comfortable living by the middle of the 1850s. Records show that from 1856 to 1858 he often earned \$100 a month from his profession, a good

salary by contemporary standards.²⁹

Business was so good that Davis asked his brother James to join him as a law partner. Twelve years younger, James received his training in Alabama, probably in Hugh Davis' law office, and was admitted to that state's bar in 1848. He tried to establish a practice in rural Mississippi, but prospects looked brighter on the Texas frontier, so James moved west in early 1856. He continued as Nathaniel's partner for over thirty years.³⁰

There are forty-seven extant cases from January 1860 to the beginning of the Civil War. They reveal a stable, well-run business. In many ways these were the best years of Davis' professional career as a respected and prosperous middle-class lawyer.

His clients did not differ in class or background from ten years earlier. Davis continued to represent property holders, such as James Price, a well-to-do Montgomery farmer and physician, or Peter Willis, a wealthy merchant. Most were local townspeople, although three of his customers resided in nearby Washington County, one in Houston, and one in Galveston.³¹

Debt collection continued to be Davis' chief service. Twenty-four of the forty-seven cases involved this sort of action. Many were still relatively simple, involving direct default on a promissory note. The amounts in question varied from \$17 to over \$6,000 owed for several tracts of land. In a typical case decided in the fall of 1860, Davis' client, Abner Womack, sued J.R. Dupree for failing to honor a \$400 note. Dupree could not be found (a frequent occurrence, as in 1850), and since Davis produced the note as evidence, the court ruled in his client's favor.³²

Such cases differed little from the debt litigation of 1850. But some of his debt-related work was more complicated than ten years previously. Montgomery was no longer a marginal establishment in the wilderness. By the eve of the Civil War, it was a permanent thriving community with several mills and retail stores, as well as extensive agriculture and ranching. The types of debts its citizens incurred, and the property on which they were owed, reflected a more developed, complex economy.³³

Five cases centered around probate issues. The men and women who founded Montgomery were growing old and dying by 1860. Many left large estates and often large debts. In November 1860, Davis represented the executors of the estate of Alexander McGown. A man named Foster claimed a variety of property from McGown's heirs: a horse, mule, several beds and other furniture, as well as several outstanding debts. Foster also claimed part ownership of several parcels of land and a slave named Lund. After a lengthy deliberation, the state district court divided the land between Foster and Davis' clients, and awarded Lund to Foster. Ownership of the other property was still in doubt, however, and the case languished in court through the Civil War and into the 1870s. No resolution was ever recorded.³⁴

Probate cases were complicated, prolonged affairs, often involving many separate transactions which took place over long periods of time. The deceased often kept poor records, and executors were confronted with a variety of claims on the finite sources of the estate. It is revealing to note that, of the five probate cases litigated by Davis in 1860-1861, only two were completed. The other three lingered on the state district court docket for years without final resolution.³⁵

Another form of debt collection pursued by Davis during this period involved the most vexing form of "property" known in the antebellum South: slaves. Davis personally disliked slavery, once declaring that bondage, with ignorance and guilt, "constitute the sum total of human misfortune."³⁶ Nevertheless, the "peculiar institution" was a steady source of business.

Davis litigated five cases involving slaves in 1860-1861. Four concerned money owed to Davis' clients for hiring slaves out. The other case required the attorney, representing William Fowler's widow, to fend off the claim of a local rancher, Willifort Cartwright, who sued the estate for the value of a slave mortgage.³⁷

Slave cases were often no different from other litigation involving "property," but sometimes the fact that a human bondsman was involved in a given transaction complicated matters considerably. Peter Willis "hired out" a slave carpenter named Hector to William Arnold, a local farmer, in the winter of 1856. Davis drafted the hire contract for Willis, which required Arnold to "treat [Hector] well, and to put him to no work more dangerous to his life or health than working a farm or common carpentering." Arnold was not "to take [him], suffer or allow him to go out of the county." He agreed to pay Willis a bond of \$6000 if Hector were not returned at the end of the hiring period.³⁸

Hector took matters into his own hands and ran away. He travelled to Guadalupe County where one of his former owners lived, a farmer named Elizabeth Johnson. Johnson had announced her intention to reclaim Hector, legally or not. Her brother Telephus lived near Montgomery, and there was strong evidence that he had enticed Hector to run away.³⁹

Davis' client, Peter Willis, sued William Arnold for the value of the slave and the bond. Davis lost the case in the fall of 1860 after a lengthy court battle. The district judge ruled that Willis should have told Arnold of Elizabeth Johnson's claim to Hector; without such information, Arnold could not have known that extra precautions were needed to keep the carpenter in the county. Willis was unable either to collect the bond money or recover Hector.⁴⁰

This was a ruling unique to slave "property." Willis would not have been required to furnish Arnold with such information for a wagon, horse, or cow. The inescapable fact in this dispute was that Hector was a human

being who could, on his own volition, become more than inanimate "property" by running away. As the attorney who drafted the hire contract, Davis did not foresee this and take what the court deemed proper precautions by warning Arnold of Johnson's claim. Nor was he able to force payment of the hire bond from Arnold. Slave property issues could be complex and unpredictable, as Willis' attorney learned to his regret.

Davis' business in 1860-1861 included non-debt related cases. Chief among these was land litigation. Real estate often appeared in his debt practice. But in 1860-1861 there were six cases concerning disputes over land in which no promissory note was involved. These were contests concerning clear title to a tract of land. In one case, two Montgomery farmers claimed a 125-acre plot situated between their two homesteads. Davis' client, James Lynch, sued his neighbor, George Matthews, for possession of the tract. But the two litigants and their attorneys arranged a satisfactory out-of-court settlement which divided the land into two parcels. When the case was brought before the district court in April 1861, Davis' only task was to record the survey marks.⁴¹

Davis also handled three divorce cases in 1860-1861. He represented physician James Price, who successfully sued his wife for desertion under Texas' divorce statute.⁴² He also represented Matilda Burden, who sued her husband John, again for desertion. Matilda had lived apart from John for several years. When the county sheriff seized a flock of sheep belonging to the couple to pay her absent spouse's debts, Matilda asked Davis if it were possible to forestall the seizure. He advised her not to attempt such a suit, which she could not possibly win while still married to John.⁴³

Mrs. Burden thereupon hired Davis to sue her husband for divorce. He failed to appear in court, and the judge peremptorily granted Matilda's request, after which a jury convened to dispose of the ex-couple's property. Their 177-acre farm was divided, but Matilda was awarded everything else: household goods, several hogs, horses, cattle, and oxen, as well as a slave woman named Hannah.⁴⁴

Davis represented some local citizens for unusual purposes. In the fall of 1860, Robert Simonton asked the lawyer to petition the local district court to alter a local pathway called the Danville road. Simonton wanted the road to run south rather than north of his land. Davis tried, but the court refused his request. There was little technical work involved; Simonton turned to Davis because, as a lawyer, he knew how to work within the system, even if the task required little legal expertise.⁴⁵

Non-debt cases such as Simonton's were relatively uncommon in Davis' work during this period, but they do indicate a more diverse business than in 1850. His practice had grown considerably, and with growth came a variety of labors.

By 1860, Davis' energies were no longer exclusively focused on locating errant debtors. Other work called for his attention which did not

require flowery oratory, debating prowess, or other trial skills associated by the public with a successful law practice.

Gathering information was a time-consuming and difficult task. Many cases required Davis to find and question witnesses, who often lived far away from Montgomery. Travelling conditions were uniformly wretched throughout the state, so Davis could not realistically expect a witness to appear personally in court. The Montgomery attorney instead tried to obtain a written deposition. He prepared a written questionnaire and mailed it to the court clerk of the county in which a potential witness was thought to reside. Davis depended on the local clerk or some other court official to locate the witness, question him or her, notarize the completed questionnaire, and return it to him in time for the trial.

Davis was at the mercy of these distant functionaries. Sometimes they proved reliable, sometimes not. They were under no obligation to comply with his wishes. One clerk wrote that he was unable to aid Davis because no one was willing to write down the answers to his questions. Another informed him that the person he sought could not be found. Many simply returned the unanswered interrogatory with no explanation at all.⁴⁶

Davis was compelled to write out what he normally would have done otherwise in a courtroom; as a result, his questionnaires were often lengthy and detailed. Davis was a methodical and painstaking lawyer, and since he possessed only one chance to question a witness, he tried to cover all eventualities by asking many questions. Preparing these documents, mailing them, and trying to ensure that they were filled out properly was probably Davis' most time-consuming work.

Other out-of-court labors called for Davis' attention. He often acted as a real estate broker, buying and selling land for land speculators such as Edward Greenway, who hired Davis to purchase several choice tracts of land in 1856. The attorney attended sheriff's sales in counties all over Texas, buying real estate for Greenway, recording the deeds, and later supervising the resale of these lands, at a handsome profit for his client. The work was grueling. Davis wrote Greenway that one sale was "over 200 miles from us and we shall have to go horseback through such a country, at this season of the year ... our Winter has been so bad that we have concluded to wait until it breaks before we have the lands sold." Davis asked for, and received, a generous sum for this work; Greenway eventually paid Davis over \$800 in fees and expenses.⁴⁷

Probate cases involved the Montgomery attorney in all sorts of odd jobs. As noted earlier, the settlement of an estate could prove very complicated. Davis old friend and court clerk, William Fowler, left a great deal of unfinished business for the attorney. Fowler died in 1954, and Davis was named as one of the executors of his estate.⁴⁸

Merely listing Fowler's assets — land, sheep, cattle, etc. — and liabilities — creditors demanding payment of outstanding debts — was

a monumental task which occupied Davis for years. The liabilities outnumbered the assets. A.M. Branch was a typical correspondent, querying Davis in April 1860, "Will you please say when I can expect a payment on the note of W.H. Fowler to J. Roberts due 1 May, 1860 [?] The old man begins to want his money"⁴⁹

Davis also was expected to care for Fowler's property until it could be sold. A man named A.H. Mason wrote the lawyer from Huntsville, informing him "I have been acting as agent for W.H. Fowler in looking out and to keep off trespassers from cutting Wood from his land near town. I don't believe the wood can be saved." Mason asked, "would it not be well to sell the wood at so much a [sic] chord and let it all be cut off?"⁵⁰ Such decisions were Davis' responsibility, and they plagued him for years. Indeed, the Fowler case was a lifelong burden; the estate was not settled until after Davis died.⁵¹

The Montgomery attorney often performed tasks which were only indirectly related to courtroom proceedings. He worked hard to educate himself in legal precedent and theory, and he prepared his trial arguments thoroughly and cautiously.⁵² But he devoted more effort to those duties which were not as conspicuously associated with the practice of law: locating debtors, finding and questioning witnesses, buying and selling property, and so forth.

By the eve of the Civil War, Davis was no longer exclusively a debt collector seeking his niche in Montgomery's legal market. He had found his place as a competent civil law attorney. His practice remained somewhat specialized, dealing in debt and property matters. But within these areas Davis litigated a much wider variety of cases, touching on probate, slaves, real estate, and divorce.

His practice was affected profoundly by the war. Davis had been one of Montgomery's foremost annexationists during the days of the Republic, fighting hard to have Texas admitted to the Union.⁵³ He was, therefore, loath to see that Union dissolved. Davis campaigned for the short-lived Constitutional-Union Party during the election of 1860, helping to draft a resolution calling for loyalty to the United States and the Constitution.⁵⁴

When Abraham Lincoln was elected, Davis chose to stay in Texas, rather than flee northward with other Southern nonconformists. He possessed strong ties to Montgomery, a town he had helped create. Davis was also probably reluctant to move his growing family: he had married in 1851, and was raising two children, with a third on the way. He remained in Montgomery throughout the Civil War.⁵⁵

Davis' law practice was severely curtailed. From April 1861 until December 1862, only nineteen cases litigated by Davis are extant. These were almost all debt matters, with a few other cases involving slave hire, probate, and land disputes. There are no surviving cases litigated by him after 1862 until the end of the war, though his financial records indicate

that he continued to practice law sporadically during that time.⁵⁶

With fewer clients and cases, Davis' income dropped. Before 1861 he could expect to earn at least \$100 a month, but during the war he often earned a third of that amount, or even less. On occasion he was paid much more, gathering almost \$300 from his practice in one month. But since many of his fees were necessarily paid in Confederate scrip, the value of those dollars was doubtful. Small wonder that he often took barter, such as several bales of wool, in payment for his services.⁵⁷

Such privation ended with the war. After Appomattox, Davis' practice entered a brief period of prosperity that equaled his pre-war business. Between April 1865 and January 1868, he litigated at least ninety-eight cases.⁵⁸

Over half were debt cases. Much of this business concerned pre-war debts. The Confederate states, including Texas, passed debtor relief laws during the war to protect the fragile Southern economy and the men away in the army. These laws made debt collection difficult. It is doubtful in any case that creditors were eager to collect what was owed them in deflated Confederate scrip.⁵⁹

After the war creditors clamored for payment, and attorneys such as Davis reaped profits from their business. In a typical case litigated in February 1867, Davis sued George H. Vilz on behalf of Jonathan Haggerty for a \$135 debt owed to Haggerty since 1862. In another, he represented Peter Willis for a small debt owed him by a local Montgomery citizen.⁶⁰

The war affected his post-Appomattox practice in interesting ways. Davis litigated many cases in which the debt was tabulated not in dollars, but in pounds of cotton. In the failing Confederate economy, many Southerners reverted to a barter system, with cotton as the medium of exchange. A typical promissory note required the cotton "to be well packed, in good merchantable condition" and delivered to a factor in Galveston. In one such matter, Davis represented a local farmer, E.E. Byrd, who sued the executors of A.J. Davis' estate for non-payment of four cotton bales. The courts treated these cases as no different from payments in specie.⁶¹

Several of Davis clients sued for debts owed on slave-related matters. Davis represented the plaintiff in two of these cases. In the third, Davis himself was the defendant. Calvin Brooks sued the attorney for failing to pay him several bales of cotton in return for hiring "two negroes, Greene and Caroline." In another case, Davis represented James Woods, an overseer who sued his former employer for over \$100 in back wages.⁶²

The freedmen themselves were a new source of business for Davis. In an unusual case, an ex-slave asked him "to procure an apprenticeship" for himself and his three stepchildren. The records are vague concerning the details of this case. Apparently Davis was asked to sue a local citizen

over apprenticeships which were promised to the freedmen but never delivered. Davis wrote, "if the matter is settled before the court my fee [is] \$10 — if out [of court] \$25." The different fees reflect the ex-slaves' desire to avoid publicly suing a white man in open court before an all-white jury. Davis seems to have settled the matter without a lawsuit, for no court decision was recorded.⁶³

Most black Southerners found the months following Appomattox trying and difficult, particularly in their dealings with the legal system. The judges and court officials in Texas during Presidential Reconstruction were almost exclusively former Confederates. They excluded blacks from juries, blocked prosecution of cases involving white violence against blacks, and otherwise bolstered white supremacy. Complaints from the state's Republican Party members were so numerous that by August 1867, Congress instructed the military authorities in Texas to remove these men and appoint loyal Unionist Republicans in their place.⁶⁴

Davis was a Republican, having joined the party after Appomattox. He noted that "the war abolished slavery ... and necessity [and] general principles made the freedman a citizen."⁶⁵ This outcome did not displease the Unionist attorney, who was an early post-war supporter of black suffrage.⁶⁶

Davis was a logical choice for the bench during the statewide overhaul. He was urged to accept the post of state district judge by a close friend and fellow Republican, who wrote, "*I know you can take the oath, you never saw the day but that you sympathized with the U.S.*" He also appealed to Davis' economic needs. "*At your time of life and a growing family I know you would be happier with a comfortable salary than the labors of the profession.*"⁶⁷

Davis assumed the post of Texas district court judge for the Eleventh District of Texas in the winter of 1868.⁶⁸ He remained on the bench for three years. His brief tenure as a Republican-appointed judge was rewarding, but uncomfortable. There were rumors that a petition was being circulated to oust him from office, for unspecified reasons. He wrote an anxious letter to Governor Edmund J. Davis in March 1870, asking if his removal was imminent. Governor Davis reassured him that "no petition has been received at this office."⁶⁹

Nevertheless, Davis was not re-appointed to the bench in the spring of 1870. He returned home to Montgomery in August. His brother James had taken over the practice during his absence. Davis looked forward to resuming his work as an attorney. "I found that my general health improved," he wrote, and believed that he returned to the bar "with (as far as I know and believe) as good prospects as when I quit."⁷⁰ In this he was mistaken.

Davis was fifty-five years old when he returned to his law office. While he continued to practice law as he entered old age, his business steadily declined.

There were probably many reasons for this. The postwar boom in legal business had ended by the beginning of the 1870s. Most of the outstanding wartime debts owed by local citizens had been settled. Davis also faced greater competition; at least three more attorneys arrived in Montgomery during the war to share in the growing town's legal market.⁷¹ Many of his old customers had died during or after the war, and Davis' scalawagism no doubt rendered problematic any attempt to build a new following.⁷²

The Montgomery attorney's practice was dominated by one customer after 1870: Peter Willis. Willis was an old friend and client who had settled in Montgomery in the 1840s. A wealthy plantation owner with many slaves, Willis gave up agriculture in the 1850s and moved to Galveston, where he established a lucrative dry goods firm with his brother Robert.⁷³

One observer described the Willis store as being "of colossal proportions," transacting business involving millions of dollars all over Texas.⁷⁴ Willis and Bro. experienced considerable difficulty in collecting payment for their merchandise. Customers moved, or died, or simply refused to pay. The ease with which Texas debtors could elude their creditors before the war continued into the 1870s and 1880s.

The firm spent a good deal of time and money in court trying to collect what was due them. They brought lawsuits in Galveston, Washington, Harris, and Robertson counties, as well as Montgomery. Davis was their representative in Montgomery, but he was only one of several attorneys retained by the Willis brothers.⁷⁵

Davis litigated over one hundred cases for the Willis store during his career. Most occurred after the war, especially early in the 1870s. This business was almost entirely debt-related.⁷⁶ Willis' debt cases were little different from any other litigation. In a typical matter decided in late 1872, Davis and Willis sued M.C. Goldthwaite of Montgomery for the value of the promissory note. Davis won this case for his client, as he won most such cases. These were routine matters for the Montgomery attorney, differing little from the debt cases which had dominated his practice for over two decades.⁷⁷

When Peter Willis died in 1873, Davis' business with the firm slackened. He litigated several cases during the middle 1870s for Willis and Bro., but most of this work had been pending since the beginning of the decade.⁷⁸

By 1880, Davis was nearing retirement. His account book for that year listed twenty cases. A surprising number were divorce cases — approximately thirty percent.⁷⁹ In the last years of his practice, he turned to divorce as his primary area of specialization to replace the debt litigation which largely disappeared after Peter Willis' death. In one such case, Davis represented Mary Paulins, who sued her husband for divorce in September 1880 for desertion. Davis declared that Marty had been "a good and faithful wife," and that the defendant had "without cause voluntarily

abandoned her ... [declaring] to different persons that he never intended to return." The district court sympathized, and granted Davis' client a divorce.⁶⁰

This was the only divorce case completed by Davis. All of the other pending suits were dismissed in 1882 when he retired. Of the twenty cases in 1880, which included several land and probate matters along with divorce litigation, fourteen were never resolved.⁶¹

The attorney was sixty-eight when he retired. A photograph of him at this time showed an unbent, dignified man with balding head and a knee-length white beard.⁶² Davis had acquired several tracts of land over the years: two town lots in Montgomery, a 600-acre farm, a 500-acre plot, and other similar tracts in the area.⁶³ "Bob Hamilton farming on Eldridge place which I have bought," he noted in one expense book.⁶⁴ Davis hired out his land to be farmed by others and lived on the profits during his retirement. He did not return to the practice of law before his death in October 1893.⁶⁵

When we open the door to Nathaniel Davis' law office, we find a scene which is quite different from what might have been expected. His office was filled with law books and treatises. Thorough preparation and familiarity with legal precedent were lessons instilled in Davis from his earliest days. He was no semi-educated "cornstalk lawyer."

Davis' office was the center of his practice, not the courtroom. He was an effective public speaker, able to express himself "in a very feeling and lucid manner," according to one observer.⁶⁶ But speechmaking was not his most important or time-consuming labor. Davis' oratorical ability was secondary to his out-of-court work.

This work reveals a practice devoted to promoting and maintaining economic stability. Davis did not exploit frontier chaos: far from it. His debt collection work nurtured confidence in an otherwise shaky credit system. Creditors needed to be reasonably sure they would either be paid or compensated for their expenses if the system were to function at all. As a probate attorney, Davis concluded a great many unfinished transactions began by his deceased clients, and participated in the equitable distribution of large amounts of property and land. As a purchasing agent for men such as Edward Greenway, the Montgomery attorney acted as a land broker in an era preceding the existence of a specialized real estate profession.

These were not the actions of a legal predator. Davis was not a man "with a whole frightening bag of tricks." He functioned as an integral part of his society, filling several important economic roles. He greased the wheels of Montgomery's economic machinery, ensuring their (reasonably) smooth operation.

Nathaniel Davis was only one lawyer among many who practiced in nineteenth-century Texas. He may or may not have been representative

of his profession. At the very least, it is hoped that an examination of his career may stimulate others to pry open the doors of other law offices in Texas history.

NOTES

¹The house and office still exist: see Sydney S. Connor, "Memoirs of the Old Homestead," *Houston Chronicle Magazine*, December 7, 1958, p. 8.

²Marilyn McAdams Sibley, *Travelers in Texas, 1761-1860* (Austin, 1967), p. 164; Maxwell Bloomfield, "The Texas Bar in the Nineteenth Century," *Vanderbilt Law Review* 32, (1979), p. 269.

³Joseph G. Baldwin, *The Flush Times of Alabama and Mississippi: A Series of Sketches* (New York, 1853; reprinted Baton Rouge, 1987), p. 11.

⁴Sibley, *Travellers in Texas*, 128; Ophia D. Smith, "A Trip to Texas in 1855," *Southwestern Historical Quarterly*, 59 (January, 1955), p. 53.

⁵T.R. Fehrenbach, *Lone Star: A History of Texas and the Texans* (New York, 1985), p. 283; this point is valid for the historiography of the American frontier in general; see Lawrence M. Friedman, *A History of American Law* (New York, 1985), pp. 306-307.

⁶Fehrenbach, *Texas and Texans*, p. 107; see also p. 283, where the author describes the frontiersman's "vast dislike of lawyers."

⁷The exception is Maxwell Bloomfield; see his "Texas Bar in the Nineteenth Century," *Vanderbilt Law Review*, 32 (1979), pp. 262-287; his excellent chapter on Galveston attorney William Pitt Ballinger in *American Lawyers in a Changing Society, 1776-1876* (Cambridge, 1876) pp. 282-296; and his discussion of black Texas attorneys in Gerald W. Gawalt, *The New High Priests: Lawyers in Post-Civil War America* (New York, 1984).

⁸H.L. Bentley and Thomas Pilgrim, *The Texas Legal Directory for 1867-1877* (Austin, 1877), p. 52; also Montgomery County Genealogical Society, *Montgomery County History* (Winston-Salem, N.C., 1981), p. 252.

⁹On legal education in America at this time, see Robert B. Stevens, *Law School: Legal Education in America from the 1850s to the 1880s* (New York, 1983).

¹⁰Nathaniel Hart Davis Papers, Box 3K403, Book 1338, Barker Center for Texas History, Austin, Texas; this is Davis' notebook dating back to 1839; for a later example of his study regimen, see notebook "No. 2," (private collection, Nat Hart Davis, Conroe, Texas).

¹¹NHD, Box 3K402, Book 1323, un-numbered page, under title "Books bought since war to 1874."

¹²NHD, Box 3K402, Book 1335, notebook "No. 1"; also notebook "No. 2" (Nat Hart Davis Collection, Conroe, Texas).

¹³*Ibid.*, "No. 2."

¹⁴Bentley and Pilgrim, *Texas Legal Directory*, 52.

¹⁵This story appears in several places; see Sydney S. Connor, "Memoirs of the Old Homestead," *Houston Chronicle Magazine*, December 7, 1958, p. 8.

¹⁶W.N. Martin, "A History of Montgomery: A Research," M.A. thesis, Sam Houston State Teacher's College, 1950, pp. 1-18 and *passim*.

¹⁷This journal is apparently lost; it is quoted in Montgomery County Genealogical Society, *Montgomery County History*, p. 252.

¹⁸Davis' early civic career is conveniently summarized in *ibid.*, p. 252 and Bentley and Pilgrim, *Texas Legal Directory*, p. 52; an election return listing Davis as a major in the local militia may be found in "An Abstract of an Election held in the County of Montgomery on the 1st of March, 1847," archives of Sam Houston State University, Huntsville, Texas.

¹⁹A list of practicing attorneys in Montgomery, taken from a missing notebook of Davis', may be found in Martin, "A History of Montgomery," p. 87.

²⁰NHD, Box 3K403, Book 1032.

²¹This assessment of Davis' clientele is based on an examination of their backgrounds and from Montgomery County Genealogical Society, *Montgomery County History*; Martin, "Montgomery County," esp. pp. 11-35; and U.S. Census Records for Montgomery County, Texas, 1860.

²²NHD, Box 3K403, Book 1032, 1-8; this is an account book in which Davis kept a list of his cases; see also District Court Minutes, 1848-1870, District Clerk's Office, Conroe, Texas; in three cases I was unable to identify who Davis represented; I found no cases in which he represented the defendant.

²³*McGown v. Simonton, Lewis and Lewis*, District Court Minutes, 1848-1870, DCO.

²⁴*McGown v. Ballew* District Court Minutes, 1848-1870, DCO.

²⁵*Luter v. Fowler*, NHD, Box 3K403, Book 1032, p. 1; *Potter v. McCollum* NHD, Box 3K403, Book 1032, p. 2.

²⁶There are ten examples of this sort of occurrence in *ibid.*, Book 1032; see for example *A.H. White, Guardian of P. Shepperd v. M.A. Shepperd and W.A. Shepperd*, Book 1032, p. 5.

²⁷*Ibid.*, Book 1032.

²⁸For example, see *Randolph v. Russell*, *ibid.*, Book 1032, p. 6.

²⁹NHD, Box 3K401, Book 1329; this is a record of cash received by Davis during the late 1850s and 1860s.

³⁰Biographical sketch of James in Bentley and Pilgrim, *Texas Legal Directory*, 52; unfortunately, James left almost no evidence of his role in the business; scattered fragments indicate that he split the civil law caseload with his brother; see 3K401, Book 1332 and Book 1325.

³¹Evidence concerning this phase of Davis' practice is derived from three sources: NHD papers, Box 3K402, Book 1356, pp. 29-55; District Court Minutes, Civil Law, vols. E-F, DCO; and miscellaneous court records from these sources; Davis' clients were identified from this material and from U.S. Census Records, Montgomery County, 1850; many of these individuals were also profiled in Montgomery County Genealogical Society, *Montgomery County History*, and Martin, "Montgomery: a History," esp. pp. 11-35.

³²NHD Papers, Box 3K402, Book 1356, pp. 29-55; *Dupree v. Womack*, Minute Book F, pp. 18, 99, DCO.

³³Martin, "Montgomery: a History," chp. 3.

³⁴*Foster, et.al. v. McGown's exec.*, Minute Book E, pp. 112, 127, 169, 222, 266, 270, 304, 314-315, DCO; see also NHD Papers, 3K402, Book 1345.

³⁵See generally NHD Papers, 3K402, Book 1345; also Minute Books E-G, Civil Law, DCO.

³⁶NHD Papers, 3K401, Book 1335.

³⁷*Cartwright v. Fowler*, NHD Papers, 3K402, Book 1345.

³⁸"Order in Vacation to hire negroes of estate of John Fridge, deceased," December 16, 1854, records, case number 1054, DCO.

³⁹"Case No. 670, *William Fridge v. Elizabeth Johnson*," Fall, 1856 (facts of case pending in Guadalupe County as related to Willis litigation), case 1054, DCO.

⁴⁰NHD Papers, 3K401, Book 1347; District Court Minutes, E, pp. 29, 56, 112, 128 and *passim*, DCO.

⁴¹*Matthews v. Lynch*, Minute Book F, pp. 77-78, DCO.

⁴²*Price v. Price*, Minute Book F, p. 60, DCO; for Texas divorce statute, see H.P.N. Gammel, *Laws of Texas*, 10 vols. (Austin, 1898), vol. 2, p. 19.

⁴³NHD Papers, 3K402, Book 1356, p. 40.

⁴⁴*Burden v. Burden*, Minute Book F, pp. 38-39 and *passim*, DCO.

⁴⁴NHD Papers, 3K402, Book 1356, p. 29.

⁴⁵See for example interrogatories for F.H. Webb and Ralph Hooker, *Pounds v. Baker*, case number 1036, DCO.

⁴⁶Quotes are from NHD Papers, "Nathaniel Hart Davis to E.M. Greenway," January 1, 1859, May 28, 1860 and September 13, 1860, 3K396; also *Greenway v. DeYoung, et.al.* Minute Book E, pp. 231, 246-247, DCO.

⁴⁷NHD Papers, 3K402, Book 1097, "First Draft of Brief and Argument for [Texas] Supreme Court, Fall, 1853," pp. 21-31; "Edward Austin to Nathaniel Hart Davis, exec. of Fowler Estate," May 27, 1860, 3K396; also 3K403, Book 1337, record of case *Fowler v. Fowler's exec.*

⁴⁸"A.M. Branch to Nathaniel Hart Davis," April 2, 1860, 3K396; there is a great deal of correspondence related to Davis' work with the Fowler estate in Davis' papers; see "Henry B. Epperson to Nathaniel Hart Davis," January 27, 1868, 3K396; "F. Dear Ramb Co. to Nathaniel Hart Davis," November 1, 1860, 3K396; "George Washington Williams to Nathaniel Hart Davis," April 29, 1860, 3K396.

⁴⁹"A.H. Mason to Nathaniel Hart Davis," August 21, 1860, 3K396.

⁵⁰Montgomery County Genealogical Association, *Montgomery County History*, p. 168.

⁵¹See NHD Papers, 3K402, Book 1097, "First Draft of Brief and Argument for [Texas] Supreme Court, Fall, 1853," for a good example of Davis' preparation; see also notebook "No. 2," (Nat Hart Davis Collection, Conroe, Texas).

⁵²*Houston Telegraph and Texas Register*, May 21, 1845.

⁵³*Galveston Civilian and Gazette*, September 25, 1860.

⁵⁴Montgomery County Genealogical Society, *Montgomery County History*, p. 252.

⁵⁵NHD Papers, Box 3K402, Book 1356; this account books contain information for Davis' practice from 1860-1873; the financial records are in 3K401, Books 1329 and 1322.

⁵⁶NHD Papers, Books 1329 and 1322; these list cash received for Davis from the late 1850s through the war; I have based my conclusions on the entries identifying monthly income for "Davis and Bro."

⁵⁷NHD Papers, Box 3K402, Book 1356, pp. 191-304.

⁵⁸Richard Cecil Todd, *Confederate Finance* (Athens, Georgia, 1954).

⁵⁹NHD Papers, Box 3K402, Book 1356, pp. 101, 208.

⁶⁰*Ibid.*, pp. 78, 83.

⁶¹*Ibid.*, pp. 78, 81.

⁶²*Ibid.*, p. 100.

⁶³Randolph B. Campbell, "The District Judges of Texas in 1866-1867; An Episode in the Failure of Presidential Reconstruction," *Southwestern Historical Quarterly* (January, 1990), pp. 356-377; for problems throughout the South in general, see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York, 1988), pp. 202-210.

⁶⁴NHD Papers, Box 3K401, Book 1322.

⁶⁵*Ibid.*, Box 3K396, "C.C. Caldwell to Nathaniel Hart Davis," November 11, 1867.

⁶⁶*Ibid.*

⁶⁷Montgomery County Genealogical Society, *Montgomery County History*, p. 252; NHD Papers, Box 3K402, Book 1356, p. 34.

⁶⁸NHD Papers, Box 3K398, "E.J. Davis to Nathaniel Hart Davis," March 22, 1870; whether such a petition actually existed is unknown.

⁶⁹*Ibid.*, Box 3K402, Book 1356, pp. 34-50.

⁷⁰Martin, "Montgomery: a History," p. 87.

⁷¹On Southern scalawags see David Donald and James G. Randall, *The Civil War and Reconstruction* (New York, 1961); Allen Trelease, "Who Were the Scalawags?" *Journal of Southern History*, 39 (1963), pp. 445-468; Richard O. Curry, "The Civil War and

Reconstruction: an Overview of Recent Trends and Interpretations," *Civil War History* (1974), p. 233.

¹³Galveston *Tri-Weekly News*, November 30, 1873; W.N. Martin, "Montgomery: a History," pp. 25-26.

¹⁴Galveston *Tri-Weekly News*, November 30, 1873.

¹⁵See *Willis v. Stamps* 36 *Texas Reports* 48 (1871); *Willis v. Owen* 43 TR 40 (1875); *Willis v. Davis* 47 TR 154 (1879), for examples of the Willis litigation outside Montgomery County.

¹⁶Index to District Court Minutes A-H, DCO, lists over 100 cases litigated by Davis for the Galveston firm from 1850 to 1880.

¹⁷NHD Papers, Box 3K402, Book 1356, p. 124.

¹⁸Several cases were appealed to the Texas Supreme Court; see *Willis v. Ferguson* 46 TR 496 (1877); *Willis v. Matthews* 46 TR 178 (1877); *Willis v. Gay* 48 TR 463 (1878); see index to District Court Minutes F-H, listing cases litigated by Davis for R.S. Willis.

¹⁹NHD Papers, 3K402, Book 1331, "Spring Term, 1880."

²⁰*Paulins v. Paulins*, District Court Minutes H, pp. 382, 421, 438-439, DCO.

²¹NHD Papers, Box 3K402, Book 1331; also docket entries for cases in District Court Minutes, H, DCO.

²²Photograph in 3K396; also in Montgomery County Genealogical Society, *Montgomery County History*, p. 252.

²³*Ibid.*, un-numbered tax receipt book.

²⁴*Ibid.*, 3K402, Book 1340, un-numbered page ("Sundry Matters to N.H. Davis," entry for 1876).

²⁵Montgomery County Genealogical Society, *Montgomery County History*, p. 252.